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*Attorneys for Diane M. Mann, Trustee*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re:

RACHAEL ANNE EARL,  
  
Debtor.

(Chapter 7 Case)

No. 2:13-bk-18751-EPB

**TRUSTEE'S APPLICATION FOR ORDER  
TO APPEAR AND SHOW CAUSE WHY THE  
DEBTOR, RACHAEL ANNE EARL, SHOULD  
NOT BE REQUIRED TO ALLOW THE  
ESTATE'S BROKER ACCESS TO REAL  
PROPERTY**

**Time: TBD**

**Date: TBD**

**Location: 230 N. 1<sup>st</sup> Avenue  
Phoenix, AZ 85003  
Courtroom No. 703**

Diane M. Mann, Trustee ("**Trustee**"), by and through her attorneys undersigned, herein applies to this Court for an Order to Appear and Show Cause ("**Application**") to be issued against Rachael Anne Earl ("**Debtor**"), as to why she should not be ordered to allow Beth Jo Zeitzer of R.O.I. Properties, LLC ("**Broker**") access to real property commonly known as 881 N. Sunnyvale, Gilbert, AZ 85234 ("**Property**"). In support of this Application, Trustee respectfully submits the following Memorandum of Points and Authorities and the entire record of this Chapter 7 administrative case.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. FACTUAL BACKGROUND.**

1. This case was commenced by a voluntary Chapter 13 Petition filed by the Debtor on October 28, 2013, which was converted to Chapter 7 on March 14, 2014 ("**Petition Date**").

2. The Trustee is the duly qualified and acting trustee in this case.

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1           3.       On or about June 27, 2014, this Court entered an Order Sustaining Trustee's Objection to  
2 Claimed Exemption relating to Debtor's claimed homestead exemption in the Property ([DE No. 56]  
3 ("Order"). The Order authorized Trustee to proceed with the liquidation of the real property at issue.  
4 This Court's decision was subsequently affirmed by the United States District Court for the District of  
5 Arizona on August 15, 2016. The United States Court of Appeals for the Ninth Circuit issued its  
6 Memorandum Decision affirming the District Court's ruling on November 27, 2017.

7           4.       Pursuant to Debtor's Amended Schedule D, the Property is encumbered by a Deed of Trust  
8 in favor of Wells Fargo Home Mortgage ("**Wells Fargo**"). See DE No. 60 at P. 1 of 7.

9           5.       Upon information and belief, the current balance due and owing to Wells Fargo as of  
10 August 2017 is \$151,251.82.

11           6.       Upon information and belief, the mortgage payments to Wells Fargo are current as of the  
12 date of this Application.

13           7.       **Upon information and belief, the Property has an estimated value of \$188,000.00 -**  
14 **\$225,000.00.**

15           8.       Trustee contends there is equity in the Property for the benefit of creditors of the Estate.

16           9.       Prior to this Application, the Broker attempted to make arrangements through Debtor's  
17 counsel to gain access to the Property.

18           10.      In failing to allow access to the Property, the same is prohibiting the Trustee from  
19 liquidating property of the bankruptcy estate, including prohibiting the Trustee from marketing and selling  
20 the Property.

21           11.      Recently, the Ninth Circuit Court of Appeals affirmed this Court's ruling sustaining the  
22 objection to the Debtor's alleged homestead exemption. See *Earl v. Lund Cadillac, LLC, et al.*, No. 16-  
23 16428 (9<sup>th</sup> Cir. Nov. 16, 2017).

24           **B.       LEGAL AUTHORITY.**

25           This Court has jurisdiction over Debtor's Chapter 7 case under 28 U.S.C. § 1334. Proceedings  
26 with respect to property of the Estate and this Application are core proceedings that the Court may hear  
27 and decide. See 28 U.S.C. § 157(b)(1) and (b)(2)(A) (E) (O) and (N). Moreover, venue is appropriate  
28

1 pursuant to 28 U.S.C. § 1408(1).

2  
3 Property of the Estate includes “all legal or equitable interests of the debtor in property as of the  
4 commencement of the case.” *See* 11 U.S.C. § 541(a). The concept of property of the estate is broad in  
5 scope, encompassing all kinds of property, including tangible and intangible property, causes of action,  
6 real and personal property, certain property held by the debtor in trust for others, and certain property  
7 of the debtor held by others. *See U.S. v. Whiting Pools*, 462 U.S. 198, n.9 (1983).

8 There is no question, or doubt, that the Property is property of the Estate. Moreover, this Court  
9 previously entered an Order authorizing Trustee to take appropriate action in order to liquidate the  
10 Property [DE No. 125].

11 This Court has the authority pursuant to 11 U.S.C. § 105 to issue any order "that is necessary or  
12 appropriate to carry out the provisions of this title". The Ninth Circuit Court of Appeals has recognized  
13 that the Bankruptcy Courts have the inherit power to sanction vexatious conduct presented before the  
14 court. *In re Rainbow Magazine, Inc.* 77 F.3rd 278 (9th Cir. 1996). Moreover, the Ninth Circuit BAP has  
15 held that an award of attorneys' fees may be warranted when a debtor fails to comply with his or her  
16 statutory duties, including a debtor's responsibility to cooperate with the Trustee. *In re Starky*, 522 B.R.  
17 220 (9th Cir. BAP 2014). The burdens and damages suffered by the Estate should be borne by the Debtor.

18 WHEREFORE, Trustee respectfully requests the Court enter an Order as follows:

- 19 A. Directing the Debtor, Rachael Anne Earl, to appear before this Court and show  
20 cause why she should not be required to allow the Estate's Broker access to the  
21 Real Property after reasonable notice;
- 22 B. Directing the Debtor to cooperate with the Estate's Broker to access the Property  
23 for purposes including, but not limited to, an inspection or viewing to potential  
24 buyers;
- 25 C. To the extent that the Debtor does not comply with allowing the Estate's broker  
26 access to the Property, the non-complying party shall be sanctioned in the amount  
27 of \$50.00 per day for each day the non-complying party prevents, or interrupts, the  
28 Broker in fulfilling her duties to the Estate;

1 D. Directing the Debtor or Debtor's counsel to provide the Estate's Broker a phone  
2 number and email to ensure timely communication can be made; and,

3 E. For such other and further relief as this Court deems just and proper.

4 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of December, 2017.

5 LANE & NACH, P.C.

6 By: /s/ Adam B. Nach – 013622  
7 Adam B. Nach  
8 Joel F. Newell  
9 Attorneys for Chapter Trustee

10 CERTIFICATE OF MAILING

11 COPY of the foregoing mailed via first class mail as follows:

12 Rachael Anne Earl  
13 881 N. Sunnyvale  
14 Gilbert, AZ 85234  
Debtor

Dan J. Earl  
881 N. Sunnyvale  
Gilbert, AZ 85234  
Non-filing Spouse

15 COPY of the foregoing mailed via electronic mail as follows:

16 Allen D. Butler  
17 Butler Law Office  
18 406 E. Southern Avenue  
19 Tempe, AZ 85282-2674  
20 Email: [abutler@legalaz.com](mailto:abutler@legalaz.com)  
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230 North First Avenue  
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21 By: /s/ Terie Flowers Turner  
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